

Appl. No. 09/943,749
Amdt. Dated July 14, 2004
Reply to Office Action of April 14, 2004

REMARKS

This communication is in response to Office correspondence dated April 14, 2004.

The Office has acknowledged the prior rejection under 35USC112 to have been cured.

The Office has acknowledged the prior 35USC102 and 103 rejections as to Land and Montgomery, of section 6 and 9-14 of the 9/9/03 Office correspondence, to have been cured by Applicant's amendments, and all rejections of claims 1 and 38 relating to corespun, to be cured by amendments.

35USC112

(3) The Office now newly rejects claims 1, 8, 17-22, 28, 29, 35-38, 79, and 80 under 35 USC 112 as dependent on amended language "other than corespun fiber", alleging there to be no support in the specification for this exclusion.

Applicant admits to a large degree of frustration through several office actions, an office visit, and an RCE application, all due to the Office's insistence in imbuing "corespun" technology into a specification and drawings that on its face and by all interpretations of one skilled in the art, does not pertain to or admit to interpretation as being applicable to "corespun" technology, articles or products made therefrom, in either its description or figures. At an interview at the Office on April 9, 2003, the Applicant demonstrated corespun yarn and explained eloquently how and why the specification was inherently distinguished from, exclusive of, and irrelevant to corespun technology. Applicant and Office further discussed and Applicant offered to amend the claims with the terminology "fibers being substantially normal to a cross section of said fiber bundle", which was concurred with by the Office in its interview summary as excluding the corespun prior art rejections. The Office none-the-less required an RCE for further searching, and then cited corespun art yet again!

Appl. No. 09/943,749
Amdt. Dated July 14, 2004
Reply to Office Action of April 14, 2004

Applicant in response, further amended the base claims to expressly exclude the class of cited art, adding two further limitations, "intimate blend" and "other than corespun", either of which on its face would be adequate to one skilled in the art to overcome the rejection. The specification, in fact, clearly implies the claimed limitation of "other than corespun", as is readily evidence to one skilled in the art, and is sufficient justification for its use as a claim limitation to overcome the art cited. Applicant without prejudice herein amends to remove the "other than corespun" which is the basis of the present rejection, because the term "intimate blend", which is expressly stated in the specification, is known in the art to be applicable only to staple yarns, i.e. short fibers, not to continuous filament yarns as to which the corespun art pertains, and effectively maintains the same limitation in the claims. See "**Intimate blend**: A technique of mixing two or more dissimilar fibers in a very uniform mixture. Usually the stock is mixed before or at the picker.", Dictionary of Fiber and Textile Technology, 7th Ed. Copyright 1999 Kosa. No one skilled in the art could or would interpret the claim thus limited, to read on or be obviated by corespun art. Applicant is confident that this, in addition to the previously agreed and adopted terminology of "fibers being substantially normal to a cross section of said fiber bundle" will carry this application through appeal, if necessary, as sufficient to overcome corespun-based rejections. Applicant asserts these remarks and amendments to cure the above rejection of claims 1 and 38 and all claims dependent thereon.

Claim 80 is also rejected under 35USC112 for the limitation "not more than 300 denier" as not found in the specification. Applicant herein cancels this claim.

35USC103

The Office has rejected claims 1, 8, 17, 18, 29, 35-38, and 80 under 35USC103(a) as being unpatentable over newly cited Bak et al's US5792555. Applicant invokes its prior remarks above and in its prior correspondence in this case, and remarks further as follows. One skilled in the art would appreciate that Bak is a different technology than the claimed intimate blend of the instant invention. It is improper to play fast and loose with terms of art. Bak's reference to an intimate mixture cannot be casually compared to the claim limitation of the term of art, "intimate blend." The "interlacing" term of art in Bak is a characteristic only of continuous filament yarns, and not

Appl. No. 09/943,749
Amdt. Dated July 14, 2004
Reply to Office Action of April 14, 2004

of staple yarns. Bak is inherently and exclusively concerned with *continuous high strength and thermoplastic filaments*, and not with the staple yarns and intimate blend with its random distribution of mixed fibers to which the invention is limited. The Bak disclosure alludes to addressing color issues by adding "fillers, stabilizers and/or pigments" to its filaments, which is a far cry from the dyeable characteristics of the intimate blend taught and claimed by this Applicant. Simply put, Bak's thermoplastic materials and interlaced continuous filaments offer no suggestion, teaching or motivation to one skilled in the art, that would lead to the claimed invention. Applicant respectfully urges reconsideration and withdrawal of this rejection with respect to the cited claims.

The Office has rejected claims 1, 8, 17, 18, 29, 35-38, and 79 under 35USC103(a) as being unpatentable over Sandor et al's US5597649. Applicant invokes its prior comments and states further as follows. One skilled in the art would appreciate that Sandor is likewise other than a staple yarn, using filament fibers rather than short fibers. It is improper and grossly in error to equate the air jet intermingling of Sandor's filaments to the term of art "intimate blend". The Office acknowledges Sandor to not teach dying, but then suggests that dying to obtain aesthetics is obvious, as if the general statement somehow reaches the specifics of the claimed invention. The Office is simply playing too loose with non-analogous technology, terms of art, and broad generalities in its attempt to analogize Sandor to the claimed invention. The Office cannot, from hindsight, conveniently trivialize the claimed invention as an obvious extension of non-analogous art without a rational basis grounded in the common knowledge and expectation of one skilled in the art. There is no rational basis upon which Sandor can be properly characterized as suggesting, teaching or motivating one skilled in the art to extend its disclosure to the claimed invention without inventive effort. Applicant respectfully urges reconsideration and withdrawal of the rejection with respect to the cited claims.

The Office has rejected claims 19-22, 28, and 80 under 35USC103(a) as unpatentable over Sandor in view of Howland's US5837623. Applicant reiterates its prior remarks including remarks about Sandor, and remarks further as follows. The '623 is the Applicant's own

Appl. No. 09/943,749
Amdt. Dated July 14, 2004
Reply to Office Action of April 14, 2004

technology, the disclosure being directed to tightly woven, penetration resistant fabrics. Nowhere in the airjet intermingled and interlaced thermoplastic filaments of Sandor is the *intimate blend* limitation of the Applicant's base claims apparent, implied, or suggested. Neither disclosure talks about dyeability in the context of the claimed invention. Applicant challenges the logic of the Office's assertion that it would be obvious to apply the staple yarn reference in the '623 to Sandor's fabric; the result is far too remote from the express teaching of Sandor to be other than a hindsight attempt to connect these two disclosures. Neither disclosure offers a rational basis to one skilled in the art for combining the two in any manner that leads to the claimed invention, short of an inventive effort. Applicant urges reconsideration of the combination and withdrawal of the rejection.

The Office has rejected claims 1, 8, 17-22, 28, 29, 35-38, 79 and 80 for non-statutory obviousness type double patenting as to claims 1-51 of Howland's US6,668,868. Applicant without comment and without prejudice does herein tender a suitable terminal disclosure.

The Office has rejected claims 1, 8, 17-22, 28, 29, 35-38, 79 and 80 for non-statutory obviousness type double patenting as to claims 170-198 of co-pending application ser. no. 09/743,744, Applicant's docket no. W0490/7028 RJP. Applicant without comment and without prejudice does herein tender a suitable terminal disclosure.

The Office has alleged additional prior art of O'Connor's US4,800,113 and Davis's US2,242,743 to be pertinent to the disclosure. Applicant acknowledges the additional art without comment and without prejudice.

Applicant further requests withdrawn claims 74-78 be restored and allowed, based at least on the allowability of claim 1.

Applicant believes the above amendments and remarks to be fully responsive to the Office Action, thereby placing this application in condition for allowance. No new matter is added.

Appl. No. 09/943,749
Amdt. Dated July 14, 2004
Reply to Office Action of April 14, 2004

Applicant requests speedy reconsideration, and further requests that Examiner contact its attorney by telephone, facsimile, or email for quickest resolution, if there are any remaining issues.

Respectfully submitted,



Vernon C. Maine, Reg. No. 37,389

Scott J. Asmus, Reg. No. 42,269

Neil F. Maloney, Reg. No. 42,833

Andrew P. Cernota, Reg. No. 52,711

Attorneys/Agents for Applicant

Cus. No. 24222
Maine & Asmus
PO Box 3445
Nashua, NH 03061-3445
Tel. No. (603) 886-6100, Fax. No. (603) 886-4796
patents@maineandasmus.com